

STATE OF MINNESOTA
IN COURT OF APPEALS

FILED

February 5, 2019

**OFFICE OF
APPELLATE COURTS**

In the Matter of the Application of
Enbridge Energy, Limited Partnership,
for a Certificate of Need for the Line 3
Replacement Project in Minnesota
from the North Dakota Border to the
Wisconsin Border.

O R D E R

**A18-2092
A18-2093
A18-2109
A18-2110**

Considered and decided by Schellhas, Presiding Judge; Worke, Judge; and Florey,
Judge.

**BASED ON THE FILE, RECORD, AND PROCEEDINGS, AND FOR THE
FOLLOWING REASONS:**

In these consolidated certiorari appeals, relators seek review of orders issued by the Minnesota Public Utilities Commission (MPUC) on September 5, 2018, and November 21, 2018, on Enbridge Energy, Limited Partnership's (Enbridge) application for a certificate of need for the proposed Enbridge Line 3 Pipeline. The September 5, 2018 order granted the certificate contingent on Enbridge's compliance with certain conditions. The November 21, 2018 order denied relators' petitions for rehearing.

On January 2, 2019, MPUC filed a statement of the case in which the MPUC argued that the September 5, 2018, and November 21, 2018 orders are not final and appealable. We issued an order questioning jurisdiction. Relators, Enbridge, and the MPUC filed informal memoranda. On January 24, 2019, the MPUC filed a supplemental memorandum

with a copy of the MPUC's January 23, 2019 order approving Enbridge's compliance filings as modified.

Any party to a proceeding before the MPUC or any other party aggrieved by a decision and order, and directly affected by it, may appeal from the decision and order of the MPUC in accordance with chapter 14. Minn. Stat. § 216B.52, subd. 1 (2018). An agency action is final and reviewable when the agency completes its decision-making process and the result of that process directly affects a party. *In re Investigation into Intra-Lata Equal Access and Presubscription*, 532 N.W.2d 583, 588 (Minn. App. 1995), *review denied* (Minn. Aug. 13, 1995). We held that the MPUC's order in that case was final because in its order after reconsideration, the MPUC expressly stated it would not change its decision that equal access must be provided. *Id.* at 589.

In this case, the September 5, 2018 order specified that it shall become effective on the day that the MPUC issues its order approving the required modifications. Because the September 5, 2018 order did not complete the MPUC's proceedings on whether the certificate of need would be approved, the September 5, 2018 order and the November 21, 2018 order denying the petitions for rehearing are not final and appealable.

These appeals were filed prematurely, before the MPUC issued its final order. Relators may file a petition for reconsideration of the January 23, 2019 order within the 20-day period under Minn. Stat. § 216B.27, subd. 2 (2018).

IT IS HEREBY ORDERED:

1. These consolidated appeals are dismissed as premature.

2. Relators may obtain review of the September 5, 2018, and November 21, 2018 orders in a timely appeal from the MPUC's final order on the certificate of need. Relators' filing fees for the future appeals, if any, shall be waived. Relators shall file a copy of this order with the appeal documents for the future appeals.

Dated: February 5, 2019

BY THE COURT

A handwritten signature in cursive script, appearing to read "Heidi S. Schellhas", is written over a horizontal line.

Heidi S. Schellhas
Presiding Judge